
SENATE BILL 5655

State of Washington

57th Legislature

2001 Regular Session

By Senators Patterson, Roach, Fairley, Kline, McCaslin, Parlette, Fraser, T. Sheldon, Shin, Winsley, Gardner and Horn; by request of State Auditor

Read first time 01/30/2001. Referred to Committee on State & Local Government.

1 AN ACT Relating to clarifying the circumstances under which the
2 governing body of a public agency may hold an executive session to
3 discuss litigation; amending RCW 42.30.110 and 42.32.030; adding new
4 sections to chapter 42.30 RCW; and recodifying RCW 42.32.030.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 42.30.110 and 1989 c 238 s 2 are each amended to read
7 as follows:

8 (1) Nothing contained in this chapter may be construed to prevent
9 a governing body from holding an executive session during a regular or
10 special meeting:

11 (a) To consider matters affecting national security;

12 (b) To consider the selection of a site or the acquisition of real
13 estate by lease or purchase when public knowledge regarding such
14 consideration would cause a likelihood of increased price;

15 (c) To consider the minimum price at which real estate will be
16 offered for sale or lease when public knowledge regarding such
17 consideration would cause a likelihood of decreased price. However,
18 final action selling or leasing public property shall be taken in a
19 meeting open to the public;

1 (d) To review negotiations on the performance of publicly bid
2 contracts when public knowledge regarding such consideration would
3 cause a likelihood of increased costs;

4 (e) To consider, in the case of an export trading company,
5 financial and commercial information supplied by private persons to the
6 export trading company;

7 (f) To receive and evaluate complaints or charges brought against
8 a public officer or employee. However, upon the request of such
9 officer or employee, a public hearing or a meeting open to the public
10 shall be conducted upon such complaint or charge;

11 (g) To evaluate the qualifications of an applicant for public
12 employment or to review the performance of a public employee. However,
13 subject to RCW 42.30.140(4), discussion by a governing body of
14 salaries, wages, and other conditions of employment to be generally
15 applied within the agency shall occur in a meeting open to the public,
16 and when a governing body elects to take final action hiring, setting
17 the salary of an individual employee or class of employees, or
18 discharging or disciplining an employee, that action shall be taken in
19 a meeting open to the public;

20 (h) To evaluate the qualifications of a candidate for appointment
21 to elective office. However, any interview of such candidate and final
22 action appointing a candidate to elective office shall be in a meeting
23 open to the public;

24 (i)(i) To discuss with legal counsel representing the agency
25 matters relating to agency enforcement actions, or to discuss with
26 legal counsel representing the agency litigation or potential
27 litigation to which the agency, the governing body, or a member acting
28 in an official capacity is, or is likely to become, a party, when
29 public knowledge regarding the discussion is likely to result in an
30 adverse legal or financial consequence to the agency.

31 This subsection (1)(i) does not permit a governing body to hold an
32 executive session solely because an attorney representing the agency is
33 present, or is consulted on a matter.

34 (ii) For purposes of this subsection (1)(i), "potential litigation"
35 means:

36 (A) Litigation that has been specifically threatened to which the
37 agency, the governing body, or a member acting in an official capacity
38 is, or is likely to become, a party; or

1 (B) Litigation that the agency reasonably believes will be
2 commenced by or against the agency, the governing body, or a member
3 acting in an official capacity.

4 (iii) An agency holding an executive session under (i)(ii)(B) of
5 this subsection shall state in the minutes of the open session the
6 reasons the agency believes the litigation may be commenced.

7 (iv) A governing body holding an executive session under this
8 subsection shall record minutes of the executive session. Any person
9 may bring action under RCW 42.30.120 and 42.30.130 challenging the
10 validity of the closed session. The minutes are not public records
11 subject to public inspection and copying under chapter 42.17 RCW unless
12 the court determines, after in camera review of the minutes, that the
13 executive session did not meet the requirements of this subsection and
14 that the records are not exempt under RCW 42.17.310(1)(j). The minutes
15 of an executive session not meeting the requirements of this subsection
16 are not subject to public inspection and copying if the executive
17 session is valid for any other reason under this section;

18 (j) To consider, in the case of the state library commission or its
19 advisory bodies, western library network prices, products, equipment,
20 and services, when such discussion would be likely to adversely affect
21 the network's ability to conduct business in a competitive economic
22 climate. However, final action on these matters shall be taken in a
23 meeting open to the public;

24 (k) To consider, in the case of the state investment board,
25 financial and commercial information when the information relates to
26 the investment of public trust or retirement funds and when public
27 knowledge regarding the discussion would result in loss to such funds
28 or in private loss to the providers of this information.

29 (2) Before convening in executive session, the presiding officer of
30 a governing body shall publicly announce the purpose for excluding the
31 public from the meeting place, and the time when the executive session
32 will be concluded. The executive session may be extended to a stated
33 later time by announcement of the presiding officer.

34 NEW SECTION. Sec. 2. A new section is added to chapter 42.30 RCW
35 to read as follows:

36 The state auditor's office shall provide information, technical
37 assistance, and training on the provisions of this chapter.

1 **Sec. 3.** RCW 42.32.030 and 1953 c 216 s 3 are each amended to read
2 as follows:

3 (1) The minutes of all regular and special meetings except
4 executive sessions of such boards, commissions, agencies, or
5 authorities shall be promptly recorded and such records shall be open
6 to public inspection.

7 (2) Agencies are not required to record minutes of executive
8 sessions, except as required in RCW 42.30.110(1)(i)(iv).

9 NEW SECTION. **Sec. 4.** RCW 42.32.030 is recodified as a section in
10 chapter 42.30 RCW between RCW 42.30.030 and 42.30.040.

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